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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,599	07/09/2001	Terry Keith Bryant		4109

7590 05/21/2003

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EXAMINER

GOODWIN, JEANNE M

ART UNIT PAPER NUMBER

2841

DATE MAILED: 05/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,599

Applicant(s)

BRYANT, TERRY KEITH

Examiner

Jeanne-Marguerite Goodwin

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on July 09, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 1-4 are objected to because of the following informalities:
 - a. Claim 1, line 5: "the sides" lacks antecedent basis,
 - b. Claim 1, lines 5 and 7: "the flexible shape" lacks antecedent basis,
 - c. Claim 1, line 8; and claim 4, lines 1-2: "it's original shape" lacks antecedent basis,
 - d. Claim 2, line 2: "to run quickly run through" is grammatically incorrect,
 - e. Claim 2, line 1; claim 3, line 1; and claim 4, line 1: --the step of-- should be added after "comprising" to better claim the invention,
 - f. Claim 3, line 1: "comprising of forming an basic or similar shape" is grammatically incorrect,
 - g. Claim 4, line 1: "comprising of the flexibility of the hour-glass shape" is grammatically incorrect.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1-4 have been rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,023,852 to Mikels [hereinafter Mikels].

Mikels discloses a hour-glass housing formed of a transparent plastic comprising a first chamber (11) and a second chamber (12) connected by a restricted throat (13) and a granular material (M). The chambers are closed at their ends by a pair of caps (14/15) further includes an outer annular flange (18/19), respectively, which provide a base for supporting the timing device. Each cap also has a central flexible membrane (20/21), which is integrally molded with the remaining molded of a rubber or other elastomeric material. Each flexible membrane further includes a centrally oriented sleeve or socket (22/23) which oppose one another along a common axis. An elongated valve stem (23) has end portions (24/25) which are securely seated and sealed within sockets. During a timing cycle, should it be desired to reset the timer, it is only necessary to depress either of the membranes toward the opposing membrane so as to shift a valve (26) into either chambers. Due to the orientation of the membranes, a recess (31/32) are formed wherein the tip of a person's fingers may be easily inserted so as to urge the membranes toward one another. As shown in Fig. 2, when membrane (20) is depressed the valve member will be urged out of the throat and into the lower chamber (12) thereby providing an unrestricted opening through the throat portion and the granular material will thus be able to immediately descend from chamber (11) into chamber (12). Once the pressure on the membrane is released, the resiliency of the membranes will automatically shift the valve stem so as to align the valve within the throat. Thereafter, the timer is simply inverted so that chamber (12) is above chamber (11) and the timing cycle is again initiated. Mikels discloses all the subject matter claimed by

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applicant with the exception of the limitation stated in claim 1, i.e., the shape of the flexible polymer.

With respect to the limitation stated in claim 1: shape of the flexible polymer, i.e., hour-glass shape, absent any criticality, is only considered to be an obvious modification of the shape of the flexible membranes disclosed by Mikels as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See In re Dailey, 149 USPQ 47 (CCPA 1976).

With respect to claims 1-4: the method steps will be met during the normal operation of the device stated above.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 disclose related devices. US Patent 3,125,849 to Wachtel, US Patent 4,267,588 to Daniels, US Patent 6,260,996 to Coleman, Jr. and CH 621670A to Béguin disclose a hour-glass timing devices.

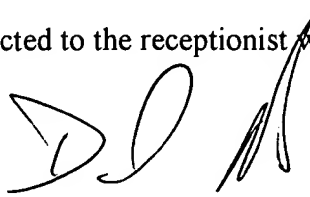
5. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Jeanne-Marguerite Goodwin whose telephone number is (703) 305-0264. The examiner can normally be reached on Monday-Friday (9am-6pm), alternate Fridays off. The fax phone number for the organization where this application or proceeding is

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assigned is (703) 308-7724. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

A handwritten signature in black ink, appearing to read 'D. Martin', is positioned above the printed name and title.

JMG
May 19, 2003

DAVID MARTIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800